

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
 : **Chapter 11**
SEARS HOLDINGS CORPORATION, et al., :
 : **Case No. 18-23538 (RDD)**
 :
Debtors.¹ : **(Jointly Administered)**
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**ORDER AND CONSENT MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
ON APPEAL**

Sears Holdings Corporation (“SHC” or “Sears”) and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully request leave to file a Conformed APA (defined below) and Supplemental Counter-Designation.

1. On or about February 11, 2019, using Litera® Change-Pro document comparison software, the Debtors generated a redlined version of the Asset Purchase Agreement dated as of January 17, 2019 by and among the Debtors and Transform Holdco LLC (“Transform” and,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 1700 Broadway, 19th Fl., New York, NY 10019.

together with the Debtors, the “**Parties**”) (Docket No. 2507) (the “**Asset Purchase Agreement**”) which reflected the amendments to the Asset Purchase Agreement effectuated by Amendment No. 1 to Asset Purchase Agreement dated as of February 11, 2019 by and among Transform and the Debtors (Docket No. 2599) (the “**First Amendment**”) (the above-described redlined version of the Asset Purchase Agreement, the “**Conformed APA**”). The Conformed APA has never been filed on the docket.

2. On April 6, 2021, the Debtors filed the *Debtors’ Third Motion to Enforce the Asset Purchase Agreement* (Docket No. 9396) (the “**Third Motion to Enforce**”). On April 20, 2021, Transform filed *Transform Holdco LLC’s Brief in Opposition to the Debtors Third Motion to Enforce the Asset Purchase Agreement* (Docket No. 9426). On April 23, 2021, the Debtors filed the *Debtors’ Reply in Further Support of The Third Motion to Enforce the Asset Purchase Agreement* (Docket No. 9436). On April 27, 2021, the Bankruptcy Court held a hearing to consider the issues presented in the Debtors’ Third Motion to Enforce. *See* Hearing Transcript (April 27, 2021). Prior to that hearing, to aid the Bankruptcy Court in its adjudication of the issues in dispute, the Debtors provided the Bankruptcy Court with a courtesy copy of the Conformed APA.

3. On June 15, 2021, the Bankruptcy Court entered the *Order Granting the Debtors’ Third Motion to Enforce the Asset Purchase Agreement* (Docket No. 9574). On June 16, 2021, Transform filed the *Notice of Appeal* (Docket No. 9581). On June 16, 2021, Transform filed the *Motion of Transform Holdco LLC for a Stay Pending Appeal* (Docket No. 9576) (the “**Motion to Stay**”). On June 29, 2021, the Bankruptcy Court entered the *Stipulation and Order Granting Stay Pending Appeal* (Docket No. 9617) (the “**Stipulation and Order Granting Stay**”), which reflected the Parties’ stipulated resolution of the issues presented in Transform’s Motion to Stay.

4. On June 30, 2021, Transform filed *Appellant Transform Holdco LLC’s Statement*

of Issues to be Presented and Designation of Items to be Included in the Record on Appeal (Docket No. 9624). On July 14, 2021, the Debtors filed *Debtors' Counter-Designation of the Record on Appeal* (Docket No. 9650) (the “**Counter Designation**”). The Debtors inadvertently omitted the Conformed APA and the Stipulation and Order Granting Stay from the Counter Designation.

5. The Conformed APA is material as it will aid the United States District Court for the Southern District of New York in deciding the issues presented on appeal and was before the Bankruptcy Court when it adjudicated the Third Motion to Enforce. Accordingly, the Conformed APA was part of the relevant record below and should, therefore, be included in the record on appeal.

6. The Stipulation and Order Granting Stay is likewise material, because it was part of the relevant record below and should, therefore, be included in the record on appeal.

7. The Debtors have conferred with counsel for Transform, and counsel has indicated Transform does not oppose the inclusion of the Conformed APA and the Stipulation and Order Granting Stay—attached here as Exhibits 1 and 2, respectively—within the official record of this Court or in the certified record on appeal pursuant to Federal Rule of Bankruptcy Procedure 8009(e) and Federal Rule of Appellate Procedure 10(e).

8. If the relief requested is granted, the Debtors shall file a Supplemental Counter-Designation of the Record on Appeal.

Dated: September 22, 2021
New York, New York

SO ORDERED:

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE